

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT LICENSE NO. 527324
Issued to: JAMES D. SPRAGUE

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2286

JAMES D. SPRAGUE

This appeal has been taken in accordance with 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 10 April 1981, an Administrative Law Judge of the United States Coast Guard at Philadelphia, Pennsylvania issued an order of admonition to Appellant upon finding him guilty of misconduct. The specification found proved, alleges that while serving as CHIEF ENGINEER on board the SS COVE NAVIGATOR under authority of the license above captioned, between 3 January 1981 and 24 February 1981, Appellant failed to notify the Coast Guard, as required by the Certificate of Inspection, that the boiler management system was not operating properly.

The hearing was held at Philadelphia, Pennsylvania on 25 March 1981.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence four documents and the testimony of two witnesses.

The defense consisted of the testimony of the Appellant.

After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and one specification had been proved. He then served a written order of admonition on Appellant.

The entire decision was served on 23 April 1981. Appeal was timely filed on 29 April 1981 and perfected on 77 October 1981.

FINDINGS OF FACT

Between 3 January and 24 February 1981, Appellant was serving as Chief Engineer on board the SS COVE NAVIGATOR and acting under authority of his license while the vessel was at sea. Appellant

had been serving on the SS COVE NAVIGATOR for six years. In the summer of 1978, while Appellant was on vacation, an automatic boiler management system was installed on the SS COVE NAVIGATOR. The Certificate of Inspection required that "(a)ny alterations or failures to the system must be reported to the Coast Guard," (emphasis added).

On the morning of 3 January 1981 the starboard boiler sequencer (one of the mechanisms of the boiler management system) failed at approximately 0930. This failure was recorded in the Engine Room Log Book. Appellant informed the Master and the Port Engineer for the owners of the malfunction. The Port Engineer instructed Appellant to package the sequencer and to send it to the company for repairs. Appellant accomplished this task.

On the morning of 6 February 1981, at about 1050, the port sequencer failed. This event was noted in the Engine Room Log Book and reported to the Master by Appellant.

Neither failure was reported to the Coast Guard as required by the Certificate of Inspection.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that the finding of misconduct was improper since the evidence did not establish that Appellant intentionally failed to notify the Coast Guard of the boiler sequencers' failures. Appellant further contends that the reporting requirement is constitutionally vague in that it does not give adequate notice to him regarding his duty to report the sequencers' failures.

Appearance: Raymond J. Burke of Burke & Parsons, New York, NY.

OPINION

I

Appellant urges that Decision on Appeal No. 1999 is controlling as to the requirement of intent. That case provided, inter alia, that the intentional violation of a statute or regulation was, per se, misconduct. From this, Appellant concludes that specific intent is a requirement for a finding of misconduct. The cited decision only said that the intentional violation of a statute or regulation was misconduct. It did not say that the reverse was true. In Decision on Appeal No. 992, the Commandant stated that specific intent is not an essential element of the

charge of misconduct in these remedial, administrative proceedings.

II

Appellant argues that the Certificate of Inspection does not specifically require him to make the notification at issue, Cf Decision on Appeal No. 1283. In that case the individual who was required to notify the Coast Guard of damage to the vessel was specifically identified on the Certificate of Inspection. While the Certificate of Inspection in the case at hand does not specifically mention the Chief Engineer as the person responsible for notifying the Coast Guard, we need not rely solely on the inference that those matters involving vessel machinery are the Chief Engineer's responsibility. The regulations at 46 CFR 35.25-1 require the Chief Engineer to notify the nearest Officer-in-Charge, Marine Inspector, of machinery failures.

Further, 46 USC 234 imposes a statutory duty upon all licensed officers to make known to the Coast Guard, at the earliest opportunity, all accidents or occurrences producing serious injury to the vessel, her equipment, boiler or machinery. The question is whether the failures of the boiler management system are the types of failures that Congress intended to be covered by this statute such that it imposed a duty to report on the Chief Engineer. The Certificate of Inspection provided that the elimination of the firemen/watertenders was contingent upon the proper operation of the boiler management system. It is then reasonable to conclude that when the system failed, without the assignment of firemen/watertenders, the vessel was not adequately manned for manual boiler operations. The Coast Guard, when issuing the Certificate of Inspection, must have considered any failure of the automated system as serious since it affected the vessel's manning. This position is buttressed by the fact that the Certificate of Inspection was issued with requirement that any malfunction of the automated system be reported to the Coast Guard.

In this case, the reporting requirement is addressed by regulation, statute and the Certificate of Inspection. The language is sufficient that a reasonable person would conclude that the requirement to report the failure to the Coast Guard was the duty of the Chief Engineer.

CONCLUSION

The charge and specification alleging misconduct have been proved by substantial evidence. There was no error in the proceeding which would require reversal and the order should be affirmed.

ORDER

The order of the Administrative Law Judge dated at Philadelphia, Pennsylvania on 10 April 1981 is affirmed.

B. L. STABILE
Vice Admiral, U. S. Coast Guard
VICE COMMANDANT

Signed at Washington, D.C. this 14th day of October 1982.